

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2265 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MOHMEDBHAI OSMANBHAI MEMON

Versus

DISTRICT MAGISTRATE

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Appearance:

MR YS LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1,2 & 4

MR SUNIL C PATEL for Respondent No. 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/06/97

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated 14/2/1997.

2. The District Magistrate, Junagadh, with a view to preventing the petitioner from acting in any manner

prejudicial to the maintenance of supply of essential commodities, found it necessary to detain him and consequently, the authority passed the impugned order in exercise of his powers as conferred by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the P.B.M. Act, 1980).

3. The respondents nos. 1, 2 and 4 have filed their respective affidavits-in-reply in answer to rule having been issued.

4. The grounds of detention inter-alia indicate that the petitioner has been indulging in illegal activity of dealing in blue kerosene by converting the same into white kerosene and thus has been committing breach of the relevant provisions of the Gujarat Essential Articles and Control Order, 1977 as also Gujarat Essential Commodities (Licensing, Control and Stock Declaration) Order, 1981, in view of the fact that blue kerosene is included in Schedule II under the Gujarat Essential Commodities Act and in view of the fact that the petitioner has not obtained licence to deal in blue kerosene.

5. It has been recited in the grounds of detention that the petitioner's garage was inspected on 21/1/1997 and it was found that the petitioner was processing white kerosene from blue kerosene by using some chemical and in support of such conclusion reliance was placed on the Panchnama, which would suggest presence of two plastic bags of chemical powder and 180 litres of blue kerosene in the petitioner's garage. Some instruments were also found at the time of the inspection and the same have been particularised in the grounds of detention. The petitioner's statement was also recorded on 3/2/1997 and the same would reveal that the garage was being used by the petitioner and that he admitted ownership of the articles found from the garage. His stand was that he was buying blue kerosene from the ration card holders at the rate of Rs.8/- per litre and was selling the same at the rate of Rs.9/- to Rs.10/- per litre without maintaining any books of accounts with regard to such dealings.

6. One Daudkhan Sarvarkhan, the original tenant of Mohsin Garage gave his statement on 12/2/1997 inter-alia stating that the petitioner's brother was a partner in the motor garage and that he had no connection with the alleged illegal activity being carried on by the petitioner. Under the aforesaid circumstances, it has been alleged that the petitioner has been engaged in the illegal activity of dealing in blue kerosene, in respect

of which the petitioner did not hold licence.

7. Reference has also been made to some illegal business of white kerosene having been carried on by the petitioner in the year 1993 for showing that the petitioner was habitual in the black marketing of prohibited essential articles. The petitioner has accordingly been detained under the impugned order of detention.

8. The aforesaid order of detention has been challenged on number of grounds inter-alia on the following grounds appearing at clause (c) at page 7 of the petition :-

"It is respectfully submitted that the panch rojkam and inquiry of garage is stated to have been made on 21/1/1997. The copy of panch rojkam supplied to the petitioner is not signed by any of the panchas. It is further submitted that another panch rojkam was made on 29/1/1997 and there also name of panchas is not shown and it is also not signed by any of the panchas. Therefore, it is submitted that the Ld. District Magistrate has passed the order of detention without scrutiny and if the learned District Magistrate applied his mind to the papers and documents, he could not have passed the order of detention against the petitioner, and therefore, on this ground alone, the impugned order of detention requires to be quashed and set aside."

Upon verification of the papers by the learned AGP it could be noticed that the panchnama which has been referred to in the aforesaid ground does not refer either the signature or name of the panchas in so far as the copy which has been supplied to the petitioner is concerned. It has, therefore, been submitted that there is non-compliance of the ground of detention and, therefore, the petitioner has been deprived of his right of making effective representation in violation of Article 22 (5) of the Constitution of India.

7. In the background of the aforesaid facts it does appear that mandate of Article 22(5) of the Constitution of India cannot be said to have been complied with. That would lead to the conclusion that the petitioner has been deprived of his right to make effective and adequate representation against the impugned order of detention. This ground alone would be sufficient to vitiate the impugned order of detention. This conclusion would stand

fortified by the decisions in the case of Budhabhai Somabhai Parmar v. District Magistrate, Kheda reported in 30 (1) GLR 325 and Kiritkumar v. Union of India reported in AIR 1981 SC 1621.

Reliance has also been placed on a Bench decision of this Court in the case of Anil Pira Baudh v/s. Commissioner of Police, Surat & ors. reported in 1989 (1) G.L.H. (U.J.) 13 (Special Criminal Application No. 218 of 1988 decided on 27/10/1988) (Coram : G.T. Nanavati and B.S. Kapadia, JJ. - Per B.S. Kapadia, J.). There the challenge against the order of detention under the Gujarat Prevention of Anti-Social Activities Act, 1985 was on the ground that no privilege was claimed with regard to disclosing the names and addresses of persons who gave statements against the detenu and the addresses of the witnesses mentioned in their statements were found to be incomplete. In the background of such facts, it has been held that failure on the part of the detaining authority to supply complete addresses of the witnesses deprive the detenu of his right to make effective representation. Even this decision would lend support to the submissions made on behalf of the petitioner.

8. In view of what is stated above, the impugned order of detention is quashed and set aside. It is directed that the detenu-Mohmedbhai Osmanbhai Memon shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

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